

Testimony of Dan Barcheski, Axios, Inc.
House Commerce Committee
May 24, 2011

Chairman Schmidt and members of the House Commerce Committee, thank you holding for this hearing on SB 12. I want to personally thank Sen. Jansen for his efforts to help me and for the passion he brings to assisting hard working business owners in his district. I also want to thank Rep. Roy Schmidt from Grand Rapids who has also worked with me to pass similar legislation last year that was stymied by the previous administration. My name is Dan Barcheski. I am a business owner, a job creator, and a taxpayer. I have worked and invested every penny I have over the last 23 years to build Axios, Inc. (Insert description of Axios)

I have paid my fair share to help our government function. I have given to countless charitable organizations. I have mentored young people and given back to my community. More than 5,000 workers depend on me for paychecks, health care, 401k, workers compensation insurance, vacation pay, and employee assistance.

Unfortunately, I am here before you today because I am under attack by my government. I have been punished before proven guilty. I have been led through the ringer by an agency hell bent on destroying my business. I know this language is rather harsh and direct, but my story needs to be told and frankly, something needs to be done to help me and others like me.

I would like to give you a brief overview of the last four years of anguish that I have experienced at the hands of the Unemployment Agency.

In the fall of fall of 2005, the Federal Government passed new SUTA dumping regulations. Michigan followed with an update to SUTA regulations. During the process to update Michigan's SUTA laws, the department wanted "client level" reporting versus the PEO entity rate reporting. We along with other PEO's opposed this because it weakens the "true employer status" of the PEO which would lead to other areas such as benefits, workers compensation and retirement plan issues. We also oppose because it would create more internal manual operations for tax filings, payments, tracking, etc.

In January 2006, Kellie Haines, President of AXIOS, Inc. and a group of PEO's met in the Capital building with the unemployment agency and representatives from the Governor's office to discuss client level reporting. It was clear no one but the unemployment office wanted client level reporting. Within 4-6 weeks of the meeting at the Capital we received a notice of a SUTA audit and a notice of a DOL 401K audit. We complied with both audits.

Soon after in March of 2006, the SUTA audit began. We were told by the auditor when he was at Axios and finished with the audit - "Everything is fine and you actually over paid by a small amount - you will get a refund."

We never heard back and when we inquired about the results and refund we were told it was completed and sent the "Detroit tax office for review". Things then went into a black hole - we heard nothing and never received a refund.

Nineteen months later in November 2007, AXIOS, Inc. received a letter from the State Unemployment Agency stating they are concerned with our company's compliance with "certain provisions" of the Michigan Employment Securities Act.

Fast forward to November 29, 2007, AXIOS held a conference call with Neil Zechman, Rodger Palm, Joe Mulligan, Tina Alegra and Cindy Coolidge from the Unemployment Insurance Agency. We discussed the letter and the nature of their concern. They basically told us 1.) They DO NOT believe we engaged in SUTA dumping and have done nothing fraudulent. 2.) They just believe we have violated the "spirit" of the Unemployment Securities Act by having separate entity rates. They believe our company should have a combined rate rather than individual rates. So they are "thinking" they are going to combine all entities and send us a determination letter of the rate. We told them we 100% disagree.

In January 2008, AXIOS received notices for each of entities that made absolutely no sense at all. They removed all wages and gave each entity penalties for "non-reporting" of wages and benefits. This was completely inaccurate - we have been 100% compliant with all reporting and payments of unemployment insurance for all entities.

At the request of Axios on January 23, 2008, a face to face meeting took place between Neil Zechman, Joe Mulligan and Rodger Palm and representatives of AXIOS. At that meeting they started by saying all of the determination letters we revied the first week of January were incorrect. They should not be followed and the Agency would send out new rate determination letters for each entity. They did say they still believe our entities should be combined in 2 forms (1 rate of all PEO companies) and (1 rate for temporary staffing agencies). Again we completely disagree and told them we would dispute any change they propose.

They told us in the meeting they again believe many PEO's and construction companies are violating the "spirit" of the unemployment act by having separate entities. They also again told us they do not believe there was SUTA dumping going on and did not believe we did anything fraudulent.

To our horror in March 2008, AXIOS receives word from employees that UI payments are being denied or delayed because the state has shut down some of the unemployment accounts for the entities in which these people were employed. There were at least three cases where payments have been delayed nearly a month.

Again at Axios's request in June 2008, a conference call is called by Sen. Mark Jansen to inquire why the Agency collapsed rates without notice and are denying AXIOS employee's benefits. The agency admits to making a mistake in consolidating the Staffing and PEO companies into one entity and agrees to uncollapse all of them so that employees are not denied benefits.

Finally in July 2008, two new determinations from the Agency are sent to AXIOS vaguely referencing violations of the law and indicating that the entities will be collapsed and AXIOS will be fined nearly \$5 million dollars.

Later that month, AXIOS files a redetermination request from the Agency within the 30 day timeframe required under Agency rules.

In the meantime, our bank paid a visit to my office to discuss our financial audit which included of course this outstanding issue and the small matter of \$5 million in fines and penalties. And amount by the way, that would make us insolvent. The only way that I could keep the necessary finances to run my company was to agree to pay a higher interest rate and to put up personal assets as collateral for the loans.

In May of last year, after nearly a year in limbo, the Agency offers a settlement to AXIOS that requires them to admit wrongdoing, submit to the collapsing of rates in exchange for the complete waiving of all penalties and interest. AXIOS rejects the settlement. This limbo went on until in November of 2010. The day after the election, we received notice that after 4 years of intrusion into our business by the agency, we would get our hearing in front of an ALJ. The day after the election.....I do not lend credence to many conspiracy theories, but I have to admit, the timing seemed odd.

Despite the long standing delays that we have had and the frustration with them leaving our business in limbo, we have requested a delay in the hearing. To put it bluntly, I am hoping that this new administration will have a less hostile view towards job providers and will review my case and put an end to this nonsense. Not only has this process put an unbelievable amount of pressure on me and my business, it has forced me to spend money defending myself that could have been used to grow my business.

I have been in negotiations with the Agency for the past few weeks. Not because I believe I have done anything wrong, but because it appears it may be cheaper to make some sort of deal than to fight this in court. I have had countless hours of attorney's fees and have even had to hire a lobbyist to assist me as I defend myself. At the end of the day, the state seems to have an endless supply of bureaucrats and attorneys to drag this out and cost me hundreds of thousands of dollars that could go towards building my business. While I am appreciative the

new administration is reviewing my case, I am sad to report that with the holdover bureaucrats from the previous Administration, we are being asked to pay significant amounts of money, alter the way we do business, and surrender to the power of the bureaucracy.

As you can see, it has been a daily struggle to defend ourselves against an agency that seems to have little regard for how their actions impact a law abiding business owner. They say I violated the "spirit" of the law. They have left me in legal limbo for nearly four years. They have caused me to have to put up my house as collateral for my line of credit. I need you to fix this injustice.

I want to make something very clear, SB 12 does not in any way change the law regarding SUTA dumping or what constitutes inappropriate or illegal activity. It simply states that before they can unilaterally collapse multiple corporate entities and attempt to assess fines and penalties, they have to prove that there was wrongdoing, they cannot do so under the guise that we violated the "spirit" of the law. If a company is actively participating in illegal activity, then they should be punished under the SUTA statute.

Sadly in my case, I am not sure that this bill will help solve my problem as we are so far down the road. However, I do not believe that any business should have to go through what I have gone through and therefore I urge you to adopt this reasonable legislation.

Thank you again for your time this morning. I am passionate about this because I have spent my life building this company and the fact that an agency can punish me before they prove I have done anything wrong is nothing less than tragic.